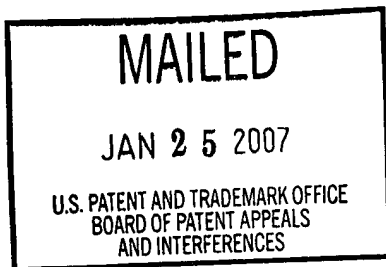


The opinion in support of the decision being entered today was not written for publication in and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte PERRIANN M. HOLDEN



Appeal No. 2006-2531
Application No. 09/910,641
Technology Center 3700

ON BRIEF

Before OWENS, CRAWFORD and FETTING, *Administrative Patent Judges*.

OWENS, *Administrative Patent Judge*.

DECISION ON APPEAL

This appeal is from a rejection of claims 21-23, 27, 29 and 32. Claims 2-4, 7-9, 12-20, 34, 42, 43, 45 and 46 stand withdrawn from consideration by the examiner as claiming a nonelected invention. Claims 1, 5, 6, 10, 11, 24-26, 28, 30, 31, 33, 35-41 and 44 have been canceled.

THE INVENTION

The appellant claims a fashion wear item comprising a flexible pad for attachment to a body part, and claims a method for using the pad to decorate a body part. Claim 21 is illustrative:

21. A novelty fashion wear item, comprising:
a flexible pad having an upper surface and a lower surface with a non-slip texture;
said pad being sufficiently flexible to conform to a contoured surface area of a body part;
said pad having its entire upper surface coated with an adhesive material for removably securing said pad to said contoured surface area of a body part to facilitate decorating said contoured surface area; and
said pad having its lower surface provided with indicia to decorate said contoured surface area.

THE REFERENCES

Yonkers	3,985,383	Oct. 12, 1976
Lee	6,613,382	Sep. 2, 2003
		(filed Dec. 22, 2000)

THE REJECTIONS

The claims stand rejected as follows: claims 21-23, 29 and 32 under 35 U.S.C. § 102(b) as anticipated by Yonkers, and claim 27 under 35 U.S.C. § 103 as obvious over Yonkers in view of Lee.

OPINION

We affirm the aforementioned rejections.

Rejection under 35 U.S.C. § 102(b)

Yonkers discloses a device for separating or indexing adjacent sheets of paper (col. 1, lines 10-12). The device includes a flexible plastic film (14) coated with a pressure sensitive adhesive (16) to enable the plastic film to be attached to a finger or other object (col. 2, line 59 - col. 3, line 3). A plurality of indexing devices can be attached by the adhesive to a backing strip (20) from which the device is removed before placement on the finger or other object (col. 4, lines 3-9). The plastic film can have a traction material (18) such as foam, sponge rubber, crosscut or hatched rubber stock, or rubber threads, attached thereto by cement (col. 3, lines 14-29). The plastic film and traction material can have variations of color and shape (col. 4, lines 10-13). In another embodiment the plastic film itself can have a traction surface (19) that is crosscut or hatched to increase its traction ability (col. 3, lines 54).

The appellant argues that what has a non-slip texture is not Yonkers' plastic film but, rather, a mass of traction material (18) adhered to the plastic film (brief, pages 9-10; reply brief, pages 5-6). Because Yonkers' rubbery traction mass materials and the plastic film are both flexible, the combination of the plastic film and the traction material

adhered thereto reasonably can be considered to correspond to the appellant's flexible pad. Also, Yonkers discloses in another embodiment that the surface of the flexible plastic film itself (i.e., no mass of traction material present) can be crosscut or hatched to provide traction and thereby perform the function of the mass of traction material (col. 3, line 54 - col. 4, line 2).

The appellant argues that the appellant's specification states that the pad in figures 1 and 2 is a single piece and that, therefore, "pad" in the appellant's claims means "single piece pad" (brief, pages 10 and 15-16; reply brief, pages 2-3). The appellant's specification does not define "pad" as being limited to one piece but, rather, merely discloses that as an embodiment. Hence, the specification does not limit the broadest reasonable interpretation of "pad" in the appellant's claims to "single piece pad".

The appellant argues that the lower surface of Yonkers' plastic film is not covered with indicia but, rather, is coated with adhesive and traction material (brief, page 11 and 13-15). If Yonkers' structure including the plastic film and traction material is considered to correspond to the appellant's flexible pad, then the color applied to the traction material (col. 4, lines 10-13) is applied to the lower surface of the pad.

Yonkers also discloses that the layer of plastic film itself can have variations in color (col. 4, lines 10-13). That disclosure indicates that in the embodiment wherein the lower surface of the plastic film itself is crosscut or hatched to provide traction (col. 3, line 54 - col. 4, line 2), the lower surface of the plastic film can be colored.¹

The appellant argues regarding claim 22 that Yonkers does not disclose decorative fashion wear (brief, pages 12-13). Yonkers' indexing devices are placed on the body and can have variations in color and shape (col. 4, lines 10-13; figures 1 and 6). Thus, the devices are capable of being perceived as decorative fashion wear.

With respect to claim 29 the appellant argues that Yonkers does not disclose that the indexing device is suitable for hands, feet, toes, knees and elbows (brief, page 16). In claim 29 the body part also can be fingers, and Yonkers discloses applying the indexing device to fingers (figure 1).

¹ As pointed out by the appellant (reply brief, pages 7-8), Yonkers states that the variations of color in both the mass of traction material and the plastic film are included in what Yonkers refers to as "alternate embodiments", and that in each of the alternate embodiments the device is constructed in essentially the same manner as in the preferred embodiment wherein traction material is applied to the plastic film (col. 3, lines 42-50; col. 4, lines 10-19). The embodiment wherein the lower surface of the plastic film itself is crosscut or hatched (col. 3, line 54 - col. 4, line 2) cannot be constructed in that manner because there is no traction material. Hence, one of ordinary skill in the art would have interpreted Yonkers' disclosure regarding color as pertaining to the plastic layer in that embodiment.

Concerning claim 32 the appellant argues that Yonkers does not disclose that the indicia can be messages and advertisements (brief, page 17). In claim 32 the indicia also can be color, and Yonkers discloses color (col. 3, line 11).

For the above reasons we are not convinced of reversible error in the examiner's rejection under 35 U.S.C. § 102(b).

Rejection under 35 U.S.C. § 103

Lee discloses that screen printing is well known and discloses applying images (26) onto note posters (10) by screen printing (col. 3, lines 39-47).

The appellant argues that Lee discloses screen printing only onto a planar sheet and not onto a non-slip texture (brief, page 18). The appellant provides no reason as to why one of ordinary skill in the art would have considered the well known screen printing technique used by Lee to be unsuitable for textured surfaces, and none is apparent.

The appellant argues that Lee is not prior art because it is predated by the appellant's provisional application 60/220,357 filed July 24, 2000 (brief, pages 18-19). As correctly pointed out by the examiner (answer, page 7), the provisional application does not provide written descriptive support for the screen printing recited in claim 27. Lee, therefore, is prior art as to that claim.

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We therefore are not convinced of reversible error in the rejection under 35 U.S.C. § 103.

DECISION

The rejections of claims 21-23, 29 and 32 under 35 U.S.C. § 102(b) over Yonkers, and claim 27 under 35 U.S.C. § 103 over Yonkers in view of Lee, are affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED

Terry J. Owens
TERRY J. OWENS
Administrative Patent Judge

MURRIEL E. CRAWFORD
Administrative Patent Judge

Anton W. Fetting
ANTON W. FETTING
Administrative Patent Judge

BOARD OF PATENT
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